I. Conclusions and Recommendations

A. Summary

As detailed throughout this report, naturalization processing before CUSA already suffered from systemic weaknesses. INS lacked standards for the consistent evaluation of an applicant's "good moral character" and other qualifications for citizenship. INS had become reliant on the use of temporary files, thus preventing adjudicators from learning as much as possible about an applicant's background, including information concerning possible grounds for disqualification. Applicant criminal history checks were poorly administered.

With the advent of CUSA, INS imposed an ambitious production goal on this vulnerable system, and failed to consider the impact of attempting to reach this goal on matters other than production. Under the pressure of production goals and in the absence of adjudicative standards, the evaluation of naturalization eligibility became more perfunctory. Adjudicators were trained and instructed to concentrate primarily on the minimal statutory criteria. In addition, their inquiries were limited by the frequent unavailability of the crucial tools of naturalization processing: applicant criminal history checks and permanent files. The procedures on which INS relied to make these tools available to adjudicators, clerical and automated processes, experienced even greater strain as production expectations increased. As a result of all these factors, naturalization processing integrity was compromised during CUSA.

Although the large numbers of pending naturalization applications and the long waiting periods experienced by applicants in 1994 and 1995 clearly called for a concerted backlog reduction effort, INS' willingness to step-up naturalization production before repairing known system weaknesses and its lack of guidance to the Field concerning how to increase production without decreasing the quality of adjudications served to make INS employees, the public, and Members of Congress suspicious of the motives for INS' aggressive production goals. The disproportionate focus on production, and the solicitous but unstructured approach INS adopted for its "partnerships" with community-based organizations, combined with intervention by officials from the National Performance Review, made INS Headquarters vulnerable to allegations that its efforts were not genuine attempts to reduce the backlog but rather were a politically motivated attempt to swell the voter rolls in time for the November 1996 election.

As detailed earlier in our report, we found that CUSA was neither created nor executed for reasons relating to increasing the number of persons who would be eligible to vote in November 1996. However, the absence of standards, the acceleration of production, and the many resulting mistakes did raise the question in the public mind—a public that was largely unaware of INS' widespread pre-existing problems—of why a government agency would so risk the quality of its work in the name of production goals.

We found that INS was willing to take these risks primarily because the agency had long tolerated a degree of error in its processes. As we described earlier in this report, INS managed the fingerprint check according to an analysis that balanced flaws in the system against the resources required to redress them, and thereby accepted a certain level of error. In view of the use of this approach in administering one of the most significant checks in the naturalization system—the check against the possibility of bestowing citizenship on someone with a disqualifying criminal record—it was no surprise that a similarly tolerant perspective informed INS' remaining safeguards, particularly when the rate of processing was increased.

Thus, implicit in the idea of backlog reduction was a general acceptance of the status quo in naturalization processing. We found that it was not an ignorance of the problems so much as an acceptance of them. As Commissioner Meissner told the OIG when discussing why INS moved forward with its plans for CUSA knowing of the problems that then existed in making applicants' permanent files available to naturalization adjudicators, "the assumption was this: . . . we have been doing it this way for years and years and years, and things need to improve. But they are not going to—you know, we are not going to create an entirely new system in a flash, and so we will do the best we can with what we have."

Furthermore, before the implementation of CUSA those vulnerabilities had not been the subject of widespread public outcry, and thus there was no outside stimulus for INS to mend its ways. What was of immediate concern to the public and to Congress were the unconscionable delays in processing naturalization applications, and it was on those delays that INS single-mindedly focused its attention.

In the wake of CUSA, INS has asserted that it is less tolerant of error in the naturalization process. As Commissioner Meissner told the Subcommittee on Immigration of the Senate Judiciary Committee in May 1997, INS undertook "comprehensive measures" to specifically "address the integrity of

the naturalization process." These steps were in addition to having abolished the presumptive policy for fingerprint checks, as described in our chapter on criminal history checking procedures. Accordingly, INS has changed many of its naturalization practices and procedures since the end of the CUSA program and has made some significant improvements. Before offering our recommendations, we briefly outline the efforts INS has made in the years since CUSA to bolster the integrity of its naturalization adjudications.

We note at the outset that our investigation was designed to answer allegations concerning the CUSA program itself and did not include an investigation or detailed assessment of the changes that INS has made since the end of fiscal year 1996. We do not purport to evaluate whether the articulated changes in policy and procedures, described below, have in fact been effectively implemented in the Field. Such an evaluation was outside the scope of our review. However, we have reviewed INS' written policy changes, including memoranda implementing new procedures and the reports submitted by outside firms who worked with INS on quality assurance audits and on naturalization reengineering, and we evaluate the extent to which the announced changes *address* the problems we have identified in this report.

We found that INS has made obvious improvements in its procedures for ensuring that applicants' fingerprints are checked by the FBI and that the results of those checks are available to adjudicators. It has also markedly improved its procedures for ordering and transferring applicant files so that they, too, are available at interview. Finally, it has implemented standardized checklists and other processing forms that allow it to monitor whether cases are adjudicated in a manner consistent with these new procedures.

However, of greatest concern is the fact that INS has not made progress toward developing and implementing adjudicative standards, including the standards for English testing and the evaluation of good moral character. INS recognized before CUSA that such standards were missing and that their absence diminished the quality of naturalization processing during CUSA. Despite efforts to "reengineer" naturalization, those same standards are still lacking. INS has made little progress toward ensuring that adjudicators, once they have the requisite tools—like the results of criminal history checks or the applicant's file—know how to use them. In short, INS has standardized its processing procedures but has not improved the substantive aspect of the evaluation of an applicant's eligibility for naturalization. Our

recommendations thus focus, overall, on steps to be taken to improve the quality of the naturalization adjudication itself.

In addition to many troublesome errors in the naturalization process, we also found that INS' representations to Congress both during and in the wake of CUSA were not completely accurate. Although we found no intention to deliberately mislead Congress, INS officials reassured Congress and then failed to follow through concerning the efforts it would make, in one instance, to safeguard against fraud in the naturalization process, and, in another, to reduce the backlog in adjustment of status processing. The testimony of some INS officials in the wake of CUSA, and other information INS provided Congress when CUSA was under review, was similarly unreliable. Therefore, our last recommendations address improving the quality of the information INS provides Congress.

B. INS' efforts to improve naturalization processing after CUSA

In her prepared statement for the March 5, 1997, joint hearing before the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight and the Subcommittee on Immigration and Claims of the House Judiciary Committee, Commissioner Meissner offered an overview of the improvements INS had made to the naturalization process:

> First, we have eliminated the possibility of naturalization cases being completed without verification of an FBI fingerprint check. That is to say, the FBI is now responding to INS in 100 percent of the cases by providing either a "yes" or "no" verification of whether there is a criminal history record for an applicant. Second, we have instituted a quality assurance program to ensure that all procedures are being followed. The program involves random monthly checks of a sample of cases from every office in INS. Third, we have contracted with the management consulting firm of KPMG Peat Marwick to review the implementation of these procedures and to conduct and oversee an audit of all cases of persons who may have been wrongfully naturalized last year. In such cases we will initiate proceedings to revoke citizenship. Finally, we are [g]etting a contract for a complete redesign of the citizenship process during the next 18 months to two years.

Two months later, by the time of Commissioner Meissner's testimony on May 1, 1997, before the Subcommittee on Immigration of the Senate Judiciary Committee, INS had augmented its plans. The contract for the redesign of the citizenship process went to Coopers & Lybrand (later PricewaterhouseCoopers or PwC), an independent accounting and management consulting firm, and they were charged with a "comprehensive reengineering of the naturalization program." Commissioner Meissner also noted that INS, "using a team of expert adjudicators and supervisors," was updating the INS "Examiner's Handbook," the guide "for field personnel in processing naturalization applications."

The improvements announced by Commissioner Meissner in 1997 have remained those pursued by INS. The new naturalization procedures implemented by INS were entitled "Naturalization Quality Procedures" (NQP), and their first edition was issued on November 29, 1996. This edition was superceded by subsequent clarifying memoranda and other editions. As of this writing, the fourth edition of these procedures, NQP4, governs the adjudication of naturalization applications filed after October 1, 1998.[1] PwC issued its final report, "INS Naturalization Reengineering Evaluation," on June 30, 1999. Finally, the updated "Examiner's Handbook" referred to by Commissioner Meissner is entitled the "Adjudicator's Field Manual." INS had completed the manual's table of contents in 1999 and it envisions 83 different chapters concerning INS adjudications. According to the table of contents, chapters 70 through 75 will address nationality and naturalization. As of this writing, only chapters 2 and 17 of the substantive chapters have been completed.[2] INS has not published any of the chapters pertaining to naturalization.

We briefly describe below each of these three efforts to improve the naturalization process.

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[1] NQP4 also applies to those applications that may have been filed before October 1 but for which initial interviews took place on or after November 1, 1998.

[2] INS published the NQP4 memorandum of June 5, 1998, as an appendix to the Adjudicator's Field Manual. INS has also published subsections of chapters other than the chapter on naturalization, including two subsections concerning adjustments of status.

1. Naturalization Quality Procedures

When they were first disseminated in November 1996, INS' Naturalization Quality Procedures offered "seven key enhancements" to "enhance and monitor the quality" of the naturalization process:

> 1) consistent, complete processing achieved through work sheets for each file; 2) fingerprint check integrity; 3) enhanced supervisory review; 4) instructions regarding temporary file use; 5) the implementation of a standardized quality assurance program; 6) guidance concerning revocation proceedings; and 7) requirements for increased monitoring of outside entity English and Civics test sites.

Since it was first issued, NQP's focus on applicant criminal history checking procedures, on file use, and on documenting the actions taken in any case has not changed, although the specific subject areas have been modified. NQP4 is subdivided into the following topics: file transfer procedures, fingerprint check integrity, G-325 biographic information checks (bio-checks), the adjudication process, supervisory review, "reverification," and "quality assurance review." INS ended its outside testing program on August 1, 1998, and thus NQP no longer addresses the monitoring of those outside entities.

NQP4 offers specific procedural instructions concerning, among other things, the steps INS employees must take to request and transfer applicant files (directions are set out in a separate nine-page appendix), and the circumstances under which a temporary file may be used.[3] It details the

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[3] NQP4 spells out A-file transfer procedures in detail. It describes how to make initial requests for A-files, how to interpret "mismatch" reports concerning the CLAIMS/CIS computer interface that is used to order A-files, and how to "resolve" those reports. The procedures are labor-intensive. For example, if a service center already "owns" or is in possession of an A-file that had been requested through the CLAIMS/CIS interface, the file number will appear in the "mismatch report." (In other words, it cannot be ordered by the inter-office file-ordering computer system because the computer system shows that it is already located at the file control office that is ordering the file.) NQP instructs the service center employee to request the A-file through RAFACS (the intra-office file-ordering system) and note the request on a clerical processing sheet (presumably attached to a temporary file). If the file is not received within 30 days, a second request must be sent to the party shown in RAFACS to be "holding" the file and a second note must be entered on the processing sheet. If the file is not received within 30 days of the second request, a third request must be sent. On this occasion, a screen printout of the third RAFACS request must

procedures to be followed for scheduling or "descheduling" a naturalization interview for an applicant for whom INS has received a relating "ident" from the FBI, and steps to take when an applicant's fingerprint card has been returned as unclassifiable or is rejected because of masthead errors. It dictates the steps to take after the naturalization interview in order to document that the applicant has met the English-language proficiency, knowledge of history and government, "good moral character," and "attachment to the Constitution" requirements of naturalization.

NQP4 also includes several procedures concerning the review of the original adjudicator's work. It specifies circumstances under which an adjudicator must obtain supervisory review of a decision to grant an application (when an applicant has a "potentially disqualifying criminal history," when the adjudication is done on the basis of a temporary file, and when an applicant is found to be exempt from the testing requirements because of a disability). It also describes the "reverification process," a procedure by which the original "Clerical, Adjudication, and, if applicable, the Continuation Processing Worksheets" are reviewed for completion by a "reverifier" (an SDAO, DAOs with certain grade levels and training, or a quality assurance (QA) analyst). Such reviews must be conducted for every case eligible for oath ceremony before the oath is administered. Finally, it describes the "quality assurance review" process by which naturalization cases in different stages of adjudication are periodically and randomly selected for review. The QA officer (a person hired for this purpose, although unfilled QA positions may be filled by officers who do not otherwise work on naturalization cases) reviews the files to determine whether they show evidence of having complied with NQP4. The QA reports are to be analyzed by the district and regional offices, and by INS Office of Internal Audit.

The most recent Service-wide NQP audit conducted by KPMG Peat Marwick revealed that 4 of 15 INS offices were not in compliance with the requirements of NQP4.[4] Indeed, each of KPMG's four previous NQP audits

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be forwarded to the person shown in RAFACS as the "responsible party" then in possession of the file. The Clerical Processing worksheet must be initialed to reflect that the third request has been made.

[4] As Commissioner Meissner had testified in May 1997, the Department of Justice engaged KPMG Peat Marwick to "validate if the new NQP . . . were correctly implemented." KPMG reviewed NQP implementation at some INS offices in February and

also showed varying degrees of compliance in the Field. However, with each audit report INS has amended its procedures to respond to the identified problems, and KPMG repeatedly found that following the new procedures "increased internal control and significantly reduced the risk of incorrectly naturalizing an applicant."

Based on a plain reading of the requirements of NQP, the OIG agrees that the implementation of these procedures does improve INS' ability to have the requisite tools for a proper adjudication available to the adjudicator at the time of the interview. By spelling out that certain file-ordering steps must be taken before an interview can take place, for example, INS has increased the likelihood that the permanent file will be available to the adjudicator at the time of the interview. By requiring supervisory review in cases with certain criminal histories or where unusual exemptions are requested, INS has increased its own oversight of adjudication quality. By requiring that the efforts to obtain the requisite tools be documented in processing worksheets, INS has also increased accountability: NQP creates an audit trail should any subsequent reviewer question the original action. All of these steps are clearly improvements.

However, NQP is a dense series of technical rules and NQP compliance is labor-intensive. Although the NQP4 memorandum is addressed to "all employees who process naturalization applications," it is difficult to imagine that line adjudicators and clerical staff can become easily conversant with its contents. (The text of the procedures is 35 pages long, with an additional 37 pages of explanatory attachments.) INS has developed training courses to help the Field understand how to use NQP, and such training makes the new procedures more accessible. Nevertheless, according to comments made to us by INS employees during interviews about CUSA (and often volunteered by them, because we did not specifically inquire about NQP), NQP has not been whole-heartedly embraced in the Field because it is a labor- and checklist-intensive process that emphasizes the importance of form. Such resistance may

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March 1997 and issued a report on that review in April 1997. KPMG reviewed the implementation of NQP3 in other offices in August 1997 and issued a report in September 1997. KPMG followed this review with an audit at 24 INS field sites, including the four service centers, 11 district offices, and 9 CUSA offices. KPMG issued the audit report in December 1997. KPMG conducted another audit, and issued subsequent reports, in the summer of 1998 and the spring of 1999.

not bode well for NQP's ultimate ability to succeed at overhauling the naturalization program.

More importantly, however, even if widely accepted and appropriately implemented in the Field, NQP4 alone is not enough. NQP4 does not purport to address the *substance* of the naturalization adjudication. It is not a guide concerning how to adjudicate cases; it is a guide concerning how to get the documents adjudicators need in order to adjudicate a case properly. As noted in the June 1999 PwC report,

> Implementation of NQP is a major step toward standardizing how naturalization cases are documented from receipt through closing and has strengthened the process integrity.
>
> While the NQP has standardized how the process is documented, it has not standardized the actual interview content or decision-making process.

To address this problem, according to the PwC report, INS will rely principally on the Adjudicator's Field Manual, the guide for Field personnel referred to in Commissioner Meissner's testimony of May 1997.

2. Naturalization reengineering evaluation

PwC's original mandate was to "examine all aspects of the naturalization process, from initial contact by an applicant, through case adjudications and the swearing-in ceremony, to the retirement of the case record." PwC worked with INS as a "joint 'redesign team' to implement—or realize—the redesigned [naturalization] process." PwC's June 30, 1999, final report, by its own definition, was an "assessment document" that provides "information about accomplishments to date, steps remaining to reach the ultimate redesigned state, and an evaluation of the progress achieved." In other words, the PwC report does not claim that the process has been redesigned. It instead describes the goals for the ideally redesigned naturalization process and tracks INS' progress toward achieving those goals.

PwC's summary of INS' progress toward achieving the goals of a redesigned process describes seven "major redesign components," each of which corresponds to some aspect of the naturalization application process. These components are: information to applicants, the telephone center (a "redesign feature" to improve customer access to information), testing,

fingerprinting, service centers, interview and oath, and technology. In all but two areas, testing and technology, the PwC report noted that INS was "on track" to realizing the redesigned process.

The OIG, given the nature of the allegations we were assigned to investigate, did not concentrate on the customer-service oriented subject matter addressed by the PwC redesign plan. We note that the improvements in this area, by better preparing prospective naturalization applicants, will also improve the adjudication process. For example, in December 1998 INS published "A Guide to Naturalization," a written source for information on naturalization for prospective applicants and other interested persons. According to the PwC report, the guide will be translated into "key languages spoken by major customer groups."

As to the remaining components, the PwC report is a useful summary of changes that have taken place in naturalization testing, fingerprinting, practices relating to interviews and oath ceremonies, and technology. Like NQP, the PwC analysis does not include a discussion of appropriate adjudicative standards or any other means of ensuring accurate and consistent decision-making. It does, however, point out the urgent need for the development of such standards if a truly "reengineered" naturalization process is to become a reality.

We offer below a brief summary of the PwC redesign recommendations that deal directly with the aspects of naturalization processing on which our report concentrates. The summary does not address all of the topics covered by the PwC report. The summary is of those aspects of the PwC report that inform our own recommendations that follow.

a. PwC's commentary on interviews

In regard to the topic of naturalization interviews and oath, PwC declared that INS was "on track" toward a redesigned process. As discussed above, PwC lauded INS' NQP as a means of having "greatly reduced the risk of incorrectly naturalizing an applicant." However, PwC noted that NQP cannot and does not address the problem of the inconsistent approaches to interviewing adjudications, and does not provide clarification of "areas that are too broad or inconsistently applied." These would have to be addressed by the anticipated Adjudicator's Field Manual, although PwC noted that a manual alone would not be enough. PwC called for adequate training, incentives to encourage compliance, and penalties for non-compliance.

b. PwC commentary on the testing of English and Civics

While PwC was working with INS, the outside testing program for English and Civics was abolished. According to the PwC report:

> Limited INS oversight of testing providers and allegations of fraud by testing providers cast doubt on the integrity of the outside testing program. INS could not reasonably validate that applicants holding passing certificates had actually demonstrated the required English proficiency and U.S. history and government knowledge.

Accordingly, INS ended the outside testing program on August 1, 1998, and stopped accepting certificates from applicants as of July 31, 1999.

For the sake of both efficiency and integrity, the PwC report recommends a testing redesign that requires applicants who are not exempt from the testing requirements to pass the citizenship tests before filing an application for naturalization. Once standardized and objective tests are developed, the redesign envisions that a "professional testing organization" will administer tests to applicants at testing centers overseen by INS. To prevent fraud, the test results will be transmitted electronically from the testing centers to INS. Although not specifically stated in the PwC report, this testing redesign recommendation appears to apply to the testing of spoken and written English, and to the testing of an applicant's knowledge of U.S. history and government. PwC noted that "a fair and consistent process will perhaps be the greatest customer benefit of the new testing program."

Current law requires that an applicant's verbal skills be evaluated "from the applicant's answers to questions normally asked in the course of the examination" or naturalization interview. The PwC testing redesign envisions that the testing of verbal English skills will be a pre-requisite to and thus separate from the naturalization interview. Accordingly, in addition to the selection of an appropriate professional testing organization to administer the test and the technological improvements required for the electronic transmission of test results, the recommended redesign requires a regulatory change to permit INS to test an applicant's verbal skills before the interview.

PwC also noted that the redesign of applicant testing was "delayed." Apart from the abolition of the outside testing program, INS has made little other progress toward implementing a new testing program or improving the traditional testing that has always been a part of naturalization interviews. The

PwC report noted that the testing process remained "basically unchanged for both the applicant and INS," and that the current process was "flawed." PwC found, as did the Center for Applied Linguistics as early as 1995, and as did the OIG as detailed in our current report, that "testing methods varied from one office to another and even among adjudicators in a single office," and that "passing standards varied." PwC pointed out that INS still had to answer the fundamental questions, "what to test? How to test? Where to test? Who will test?"

c. PwC commentary on INS technology

The PwC report includes a component on the technology used by INS. It describes, as we have, the multiple computer systems on which current naturalization processing depends. We summarize here aspects of PwC's findings and recommendations concerning INS technology because they have a direct bearing on INS' ability to properly administer its A-file policies and procedures, one of the substantive topics of our report.

Despite the development of revised systems since the end of CUSA—like the Reengineered Naturalization Automated Casework System (RNACS)—the interfaces among INS' various systems, according to the PwC report, continued to be complicated and often failed. The PwC redesign thus recommended that INS develop centralized information management and centralized records management. To achieve these goals, INS planned to "develop and deploy" the new CLAIMS 4, a centralized database that consolidates the previous version of CLAIMS (CLAIMS 3) and RNACS. INS also planned that completed applications would be scanned into CLAIMS 4 at the service centers, so that the information would later be available to adjudicators in an automated format. This procedure would move INS away from the use of its current paper application. INS also planned to develop and deploy the National File Tracking System (NFTS), a national system that will recognize multiple files in various districts and will eliminate the need for local tracking systems, including RAFACS.

In March 1999, INS had introduced a "baseline version" of CLAIMS 4 which, according to the PwC report, "provided basic functionality" for naturalization. By June 1999, it had been implemented in all service centers, three regional offices, and 23 field offices. However, PwC noted that personnel at the sites using the new system have complained that CLAIMS 4 is "sluggish," that the interview time is lengthened as adjudicators adjust to

working with the system instead of with the hard copy of the N-400, and that "system efficiency is hampered by CLAIMS 4 dependency on multiple systems with complicated interfaces." The NFTS, on the other hand, has not yet been developed. According to the PwC report, INS is not "on track" with the "technology" component of its redesigned naturalization process.

3. The Adjudicator's Field Manual

The last of the three major efforts by INS to improve its naturalization processing is the Adjudicator's Field Manual.

Apart from the technical, procedural improvements like fingerprint processing and file transfers, the remainder of the issues in naturalization adjudications that have been the subject of our report are anticipated by INS to be addressed in the Adjudicator's Manual. An effort to create a revised manual was announced by Commissioner Meissner in May 1997. According to the PwC report in June 1999, INS was then working on developing the naturalization portions of the manual. As of this writing, INS has not published any section of the manual concerning naturalization processing.

C. Recommendations

1. Interviews and adjudications

a. The evaluation of "good moral character"

In regard to the "good moral character" evaluation, we found that adjudicators had different understandings concerning when they were to explore issues not directly raised by the questions on the N-400, or when they should request corroborating documentation. Because the adjudicative corps during CUSA was made up mostly of new officers with only brief training, they did not have years of experience to draw on in the absence of formal guidance. As production expectations increased, their questions were usually resolved in favor of the choice that was the least time-consuming: if the inquiry was not necessary to the adjudication, it was discouraged. As a result, adjudications were weighted in favor of approval, because adjudicators were not encouraged to take the time required to explore and perhaps uncover grounds of disqualification. Thus, the absence of standards made naturalization adjudications more vulnerable to compromises brought about by the application of production pressures.

Concerning the standard for evaluating "good moral character," the PwC report notes only that although NQP standardizes "how the process is documented," it does not provide consistency to the interview or the actual decision-making process.[5] In "recognition of this problem," according to PwC, INS is working on the naturalization portions of the Adjudicator's Field Manual. As noted above, because INS has yet to publish the naturalization portions of its Adjudicator's Manual, there has been no further guidance available to the Field for the appropriate evaluation of an applicant's good moral character.

The lack of progress in this area is of great concern. Since before CUSA, INS has recognized that adjudicators were in need of guidance in this area, and yet none has been disseminated. It is the heart of the naturalization inquiry, the aspect of the examination process without which the standardization of file procedures and checklists has little substantive value.

At the same time, the OIG recognizes that the "good moral character" standard is one that has been the subject of many varying legal interpretations. However, to continue to ignore the need for a standard simply because that standard is difficult to set invites the type of problem that characterized CUSA: the reduction of the evaluation of eligibility for citizenship to the bare statutory minimums.

INS may choose instead to work toward changing federal law to require that, to be eligible for citizenship, an applicant need only demonstrate that he or she is not statutorily disqualified, and thus bring federal law into conformity with what has been, in many busy INS offices, the *de facto* practice. However, unless and until the legal requirements for citizenship are legally modified to reflect these practices, INS must provide guidance to the Field concerning how to adjudicate cases in a manner that is consistent with applicable law.

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[5] Because INS has not developed standards in this area, it cannot provide applicants much guidance concerning the evaluation they will undergo. The "Eligibility Worksheet" published with INS' "A Guide to Naturalization" directs the prospective applicant through a series of statements, and if the applicant indicates "not true" in response to any statement, the worksheet directs the applicant to "stop," and notes, "you are not eligible to apply for naturalization." Statement number nine is, "I am a person of good moral character."

The Guide, like federal statutory law, does not define "good moral character." It lists examples of the types of things that "might show a lack of good moral character," but clearly is not exhaustive.

Accordingly, we make the following recommendations:

1) INS should prioritize its work on the naturalization portions of the Adjudicator's Field Manual if it is to be the controlling source for adjudicative standards as described in the PwC report. INS should disseminate the manual to all adjudicators, and provide training in conjunction with its publication that will permit adjudicators to become familiar with its contents.

2) In the drafting of the "good moral character" subsection of the Adjudicator's Field Manual and in adjudicator training, INS must provide guidance on how to "evaluate claims of good moral character on a case-by-case basis" as required by current law. This guidance should include guidance on the following topics within the broader category of the evaluation of "good moral character," all of which we found to be a source of confusion for adjudicators during CUSA:

    a) guidance concerning when, if ever, it is appropriate to ask an applicant questions other than those listed on the N-400;

    b) guidance concerning when, if ever, it is appropriate to ask an applicant to provide additional documentation (such as copies of income tax returns or proof of having paid child support) to support his or her demonstration of good moral character;

    c) guidance concerning when, if ever, an applicant who is not statutorily precluded from establishing good moral character may nevertheless be found to lack good moral character and thus not be eligible for citizenship;

    d) guidance concerning the relevance to the good moral character inquiry of certain common but non-precluding crimes like driving under the influence of alcohol or, in some states, spousal battery;[6]

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[6] Whether the crime of spousal battery may preclude the applicant from naturalizing depends on how the crime is defined under state law. In California, for example, the crime is defined as "willful infliction of traumatic injury on a spouse," and, because of the "willfulness" element, has been found to be a crime of moral turpitude. A person is ineligible for naturalization if he or she has been convicted of a crime of moral turpitude within the statutory period, although an exception is made if the applicant only committed

e) guidance concerning how to evaluate the effect of probation or parole on the good moral character determination; and

f) guidance concerning the record that must be created in order to legally support the adjudicator's finding that the applicant lacks good moral character so that the original finding may be upheld in the face of subsequent legal challenge.

b. Testing

As Commissioner Meissner told the OIG, INS had a long history of "arbitrary and untrained testing procedures." Before CUSA, INS had recognized the Field's need for guidance concerning the standards to be used in evaluating an applicant's English proficiency and knowledge of U.S. history and government. Because INS failed to provide such guidance, inconsistent testing practices continued throughout CUSA.

Despite INS' own repeated identification, since late 1995, of the development of testing standards as a priority, still none exists. INS' creation of the outside testing program—which had, in part, been intended as a strategy for standardization—resulted in failure as INS did not adequately monitor the outside testing entities or timely respond to evidence of fraud in test administration. The abolition of the outside testing program in August 1998 makes moot our concerns of inadequate monitoring in that program, but the problem of inconsistent, unfair, and untrained testing practices remains unresolved.[7]

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one such crime and it was a misdemeanor for which the applicant's jail sentence was less than six months.

[7] We note that NQP4 dictates that an officer "**must not** [emphasis in original] conduct the interview in the applicant's native language as a means of completing the interview unless the English requirement is waived." This is more restrictive than current law which, under the provisions concerning "History and Government examination," permits the examination to be conducted in the applicant's native language if the applicant "has satisfied the English literacy requirement . . . but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English."

We also note that instructions for Form N-400 currently in use, like the one used during CUSA, continues to misstate the legal requirements for eligibility for a waiver of the English-language requirements and should be corrected.

According to the PwC report, INS has convened a policy working group that is "drafting a procurement package for a test development contract and is working with INS testing experts and the Department of Education." According to William Yates, now the Acting Deputy Executive Associate Commissioner for the Immigration Services Division, as of June 2000 the working group has made no additional progress since the publication of the PwC report.

As a result of our investigation and in view of the steps INS has taken since CUSA, we make the following recommendations in regard to naturalization testing:

3) With or without the services of an outside consultant, INS should immediately develop a standard by which to evaluate an applicant's "ability to read, write and speak words in ordinary usage in the English language" as required by current law. Appropriate standards are overdue and will be required regardless of whether INS otherwise adopts the testing recommendations in the PwC report. Therefore, the development of the standard for English-language testing should not be postponed pending the development of other testing strategies that may not be implemented for many months to come.

4) As long as current law continues to require that an applicant's verbal skills be evaluated "from the applicant's answers to questions normally asked in the course of the examination," INS should provide guidance concerning *which* questions normally asked at interview are appropriate indicators of the requisite level of language proficiency, and *how* those questions should be posed.

5) INS should ensure that the "Service authorized Federal Textbooks on Citizenship," excerpts from which are required by current law to be used for the testing of applicants' reading and writing skills and for their knowledge of U.S. history and government, are up-to-date, accurately reflect by example the nature of the tests administered, and are available to adjudicators.

6) INS should provide guidance and training concerning the nature and number of questions to be used for the testing of an applicant's knowledge of U.S. history and government, including the range of questions from which an officer may choose and how the officer should tailor the test to the individual applicant as required by current law. According to the edition of

"A Guide to Naturalization" available as of this writing, INS continues to publish the list of 100 questions, although modified in small ways, that was used during the Legalization (Amnesty) program of the 1980s and during CUSA. If this is the list from which adjudicators continue to draw their questions, INS must provide guidance concerning the discretion an officer has to choose questions from the list, including the number of questions offered the applicants and whether there is any required passing percentage.

c. The evaluation of whether the applicant lawfully obtained permanent residency status

Having been lawfully admitted to the United States is a prerequisite to naturalization. Providing false testimony to obtain an immigration benefit during the statutory period necessarily prevents an applicant from establishing good moral character. The evaluation of both requires the adjudicator to review the applicant's immigration and residency history.

We found that during CUSA in four of five Key City Districts INS interpreted the confidentiality provisions of the Immigration Reform and Control Act of 1986 (IRCA) too broadly and thus prevented adjudicators from exploring suspicions that applicants who became residents under the provisions of IRCA may have obtained residency through fraud. Although opinions issued by the General Counsel made clear that an adjudicator could review an applicant's entire file in conjunction with the naturalization adjudication—even that portion of the file segregated from the rest of the information by a red sheet, indicating that the file contained information subject to the confidentiality provisions of IRCA—local interpretations contradicted that advice and adjudicators were often instructed that they could not conduct such a review.

We also found that INS conducted a large scale investigation into a particular scheme involving fraudulent adjustment of status applications under the Special Agricultural Worker (SAW) provisions of IRCA, and yet failed to timely provide adjudicators information about the fraud, and thus failed to prevent many applicants suspected of SAW fraud from naturalizing.

Accordingly, we make the following recommendations:

7) INS should reiterate to all adjudicators that it is appropriate to conduct a review of the entire applicant file in conjunction with the naturalization adjudication.

8) INS should provide guidance concerning how to detect previous fraud by applicants for naturalization, and how to confirm or dispel during the naturalization interview such suspicions of fraud.

9) INS should provide guidance concerning any other information available in an applicant's file that may have a bearing on the adjudicator's evaluation of the applicant's eligibility for citizenship.

10) INS should improve the coordination between its investigative and adjudicative efforts so that information concerning fraudulent activity detected by INS investigators is timely available to and appropriately acted on by those who may be asked to adjudicate related benefits applications.

d. Streamlining adjudication processes

We found that INS' efforts to streamline the adjudication process during CUSA resulted in compromises to system safeguards designed to prevent the ineligible from naturalizing. They also gave adjudicators and, subsequently, Members of Congress, the impression that INS was willing to modify procedures in order to appease community groups or those with political interests in disregard for eligibility standards. In the event that INS considers future streamlining strategies or continues to conduct "off-site processing," we make the following recommendations:

11) In conducting "off-site" or "outreach" processing, INS should provide guidance to the Field for the fair and consistent administration of such programs, including procedures for determining which outside organizations are entitled to participate and how to ensure that additional pressures to approve applications are not brought to bear on participating adjudicators.

12) In implementing any "streamlining" procedure, INS must first validate the procedure to ensure that no sacrifice is made to naturalization processing integrity in the name of the streamlining innovation.

2. A-file policy and practice

We found that by fiscal year 1996, INS' records infrastructure and file policies were in disrepair. In the largest Key City District, Los Angeles, INS had become inured to the idea that permanent files would not be reviewed in conjunction with the applicant's naturalization interview. Other districts also often used temporary files to conduct naturalization adjudications. As

production increased under CUSA, reliance on temporary files increased. As a result, adjudicators made eligibility determinations based on incomplete information. Also, the creation of hundreds of thousands of temporary files increased INS' records burden. INS had lost control over its own records, and consequently, in at least two instances investigated by the OIG, was unable to produce information requested by national auditors (for the KPMG-supervised Criminal History Case Review) or by Congress (for the Committee on House Oversight investigating the election contested by Robert Dornan) because it was unable to locate the relevant files.

Since the end of CUSA, INS has made an effort to shore up its file policy and practices. NQP4 plainly states that "the review of an applicant's A-file is critical to confirming that the applicant is eligible for naturalization." As discussed above, NPQ4 sets out detailed file transfer procedures that must be followed, including procedures to use when previous procedures have failed to result in the successful transfer of a file. It also requires that "error reports" generated by the computer systems be resolved and not ignored. All of these procedures make successful file transfers and thus file availability more likely. In those instances when the permanent file is not located and available at the interview and a temporary file must be used, NQP4 requires supervisory review of an adjudicator's decision to grant the application. Thus, when temporary files are used, the risk that such use will result in an improper decision is reduced by supervisory review.

However, these improved file-transferring procedures are highly dependent on INS' automated systems, systems that—as our investigation revealed—historically have not been designed or maintained in a manner that allows them to live up to the extensive expectations placed on them. INS' efforts with CLAIMS 4 and NFTS are responsive to the problems we identify in this report. As noted at the outset, we have not evaluated whether the implementation of these innovations has been successful to date. However, we offer certain cautionary recommendations as INS continues its efforts with automation.

The task of consolidating into one automated system all of the information on which a naturalization adjudicator depends—the information from the applicant's file, the information from the N-400, any enforcement action that may have been taken against the applicant—is enormous. Ideal file-transferring and the availability of an applicant's immigration history is dependent on these automated systems. They, in turn, are highly dependent on

adequate financial resources to be spent on design, technological infrastructure, and user education. Successful implementation depends on knowledgeable and capable management of the system and its users. Assuming all of these necessary resources will be available to INS, the goal still cannot realistically be achieved for many years to come.

Our concern lies more with the immediate future. In both its records management and its administration of criminal history checks, INS historically failed to shore up its contemporary practices because it was waiting for the reengineered processes of the future to take over and make its paper-based processes obsolete. In the meantime, the paper-based processes were poorly administered. If this history is repeated, hundreds of thousands of naturalization adjudications are at risk as INS continues its work in the years until that automated future arrives. Accordingly, we make the following recommendations:

13) INS should validate its file-transferring procedures under NQP4 to determine the extent to which they have been successful at getting the applicant's permanent file to the adjudicator in time for the naturalization interview; if temporary file use exceeds some small percentage of naturalization adjudications, reexamine the transferring procedures to determine what additional efforts can be made to make permanent files available.

14) INS should continue to prioritize the importance of file transfers and of file availability to the adjudicator, and, as noted in our section on adjudicative guidance, above, should train and remind INS staff on the relevance of the permanent file to the naturalization adjudication.

15) INS should continue to search for applicant permanent files even after a temporary file has been used for the naturalization, and should review the permanent files to ensure that the decision made without the permanent file was proper; the results of such reviews (or "post-audits") should be used to determine whether the temporary file procedures promulgated under NQP are sufficient to keep the risk of error occasioned by temporary file use to a minimum.

We also found that INS' loss of control over its records, and thus its loss of control over information pertaining to naturalization applicants, was not attributable solely to its poor file practices. INS' failure to properly update and maintain its data systems was another significant contributing factor. Because

INS did not timely "close out" cases and update databases, we found that INS could not rely on querying those databases to confirm an applicant's naturalization status. The combined problem of poor file practices and inaccurate database information allowed the Los Angeles District to provide incorrect answers to Congress when Congress sought information on the naturalization status of certain voters. The failure to "close out" files and to update the database also appears to have caused a fundamental flaw in the data INS provided to the KPMG-supervised review, thus rendering incomplete (by 71,000 cases) the universe of cases on which these important and costly studies were based.

Accordingly, we also make the following recommendations:

16) INS should ensure that the Field timely closes out naturalization cases and updates the relevant naturalization database(s).

17) As INS depends more on automated systems in naturalization processing, the accuracy of the information in those systems is paramount. Accordingly, INS should periodically test or audit the information in the naturalization database to determine its accuracy; when inaccuracies are revealed they should be quickly corrected.

The administration of INS' A-files and automated data and the implementation of the recommendations listed above depend for their success on the quality of INS' clerical staff. We found that many of the processing problems we identified in our report—problems of file-ordering, document interfiling, case close-outs—were attributable in part to shortages of clerical staff, deficiencies in the instructions given to clerical staff (including contractor employees), and insufficient emphasis on the importance of the clerical aspects of naturalization processing. Accordingly,

18) INS should monitor its clerical staffing and training to ensure that its application processing is supported by a sufficient number of clerical employees who are properly trained to carry out their important processing functions.

3. Criminal history checking procedures

Of all of the processing flaws that came to light in the wake of CUSA, those in INS' criminal history checking procedures were the ones of greatest concern to Members of Congress. In addition to the policy that permitted adjudicators to presume the absence of a criminal record simply because there

was no rap sheet in the file used at adjudication (the presumptive policy), INS failed to ensure that fingerprint cards rejected by the FBI were replaced with suitable cards, and failed to ensure that those rap sheets that did result from criminal history checks were available for review by adjudicators at interview. Because of these flaws, INS naturalized persons with disqualifying criminal histories[8] and failed to conduct a complete criminal history check for 18 percent of the total population naturalized. In addition, INS' "bio-check" procedures, by which INS would learn information about an applicant who was the subject of an investigation by the FBI or other government agencies, were negligently administered.

It has been in this area of greatest weakness that INS has clearly made the greatest improvements. The presumptive policy was abolished in November 1996. INS also abandoned its Designated Fingerprinting Services program and now exercises control over how fingerprints are taken. Current automated systems are designed to keep a case on "hold"—prevent it from being scheduled for interview—unless the FBI affirmatively reports that the applicant has no criminal history. The hold must be manually removed and must only be lifted after the rap sheet has been interfiled and is thus available to the adjudicator. Automated systems thus will not schedule a case if there has been no response from the FBI, as would be the case if, for example, a fingerprint card has been rejected for masthead errors. Finally, NQP4 requires that records from the disposition of criminal cases be in the file before an *adjudication* is completed—that is, before the applicant is approved for naturalization, thus prohibiting a practice like the vulnerable one that existed in the Los Angeles District during CUSA of reviewing rap sheets after applicants had been approved.[9] All of these changes represent significant improvements and will

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[8] INS naturalized 369 persons with disqualifying criminal histories during CUSA according to KPMG's review of the 1,049,867 naturalized cases then identified by INS.

[9] The requirement that disposition records be in the file before adjudication does not speak to the importance of the thorough review of those disposition records, or to the possible need to ask the applicant questions concerning information the records reveal. We presume that INS intends by such a requirement that the disposition records will be reviewed by adjudicators who are trained to recognize issues that require further exploration, and who have the discretion to reschedule the applicant for a supplemental interview if necessary. However, without specific guidance in this regard, adjudicators could comply with the letter of this rule without conducting any meaningful review.

increase INS' ability to prevent applicants with disqualifying criminal histories from being naturalized.

INS has also improved its procedures in regard to "bio-checks." NQP4 provides instructions that if the service center advises the local office that a "third agency has information" about an applicant, "third party responses" must be obtained.[10]

However, vulnerabilities remain in INS' criminal history checking procedures. In regard to fingerprint checks, INS still has not completely embraced the notion that completed criminal history checks are absolutely necessary in every case, as explained below.

Recently, INS has proposed a revision to NQP4 that would permit a naturalization adjudication to proceed when an applicant has had two fingerprint card submissions to the FBI returned to INS as "unclassifiable." Under current NPQ4 guidelines, such applicants are required to obtain police clearances from all jurisdictions in which they resided during the previous five years.[11] According to the proposed revision to NQP4, INS has now determined that

> The Service's current control over the fingerprinting process, the significantly diminished unclassifiable reject rate, and the FBI criminal history checks performed for classifiable and unclassifiable fingerprints alleviates the need for local police clearances.

This proposed policy does not apply to those persons who are *unable* to submit classifiable fingerprints—those applicants receive a fingerprint waiver and *must* obtain a police clearance. It applies instead to applicants who are *not unable* to submit classifiable prints, but who have had two submissions rejected as unclassifiable by the FBI. Such a proposed policy reveals that INS remains

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[10] Applicants with positive "bio-check" responses may be scheduled for interview but not for ceremony unless the third agency information, or documentation of its unavailability, is obtained and in the file. An officer must verify that such applicants have established "good moral character" despite the information available as a result of the bio-check.

[11] The exact nature of a "police clearance" is not defined in NQP4 or in INS' Policy Memorandum No. 60 concerning the requirement of a police clearance for applicants who failed to submit legible prints. We infer that it is some confirmation by the appropriate law enforcement agency that the applicant does not have a disqualifying criminal history record.

willing to gamble—given the relatively small number of cases to which such a policy will apply—that in some instances it is simply not necessary to insist on a full fingerprint check or, in its stead, a thorough police clearance.[12]

There is little reason to support this change in policy. Either an applicant is unable to submit classifiable prints because of some physical condition, and thus should obtain a fingerprint waiver, or classifiable prints should be obtained. This is especially true now that INS, and not outside entities, has control over the process of taking and submitting the fingerprint cards and thus bears the responsibility for the quality of the fingerprint impressions taken. Except for processing expediency, there is no substantive reason for foregoing a full fingerprint check provided that the applicant's fingerprints *can* be "taken." The fact that INS considered foregoing the criminal history check—and not substitute it with a police clearance—in those cases where two tries have been unsuccessful suggests that former attitudes of weighing the costs against the remote risk of detecting a disqualifying criminal history—attitudes that prevailed during CUSA and in earlier years—remain. To the extent that such attitudes continue to inform criminal history checking policies, they threaten the integrity of the naturalization process.[13]

In regard to "bio-checks," there is no explanation in NQP4, or otherwise available to adjudicators, of what these checks are or how to obtain the third-party responses. There is no instruction concerning how to interpret or what to do with derogatory information received, or how to proceed when alerted that there is a "possible hit" concerning the naturalization applicant.

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[12] INS' proposed policy change also reflects the lingering misunderstanding at INS about the nature of the "check" a rejected, unclassifiable fingerprint card has undergone. As we noted in our chapter on criminal history checking procedures, when the FBI returns an unclassifiable fingerprint card to INS with the notation "no record based on name-check," this does *not* mean that the applicant has no criminal record. It means instead that the fingerprints on the submitted card were of insufficient quality to allow definitive comparison to the fingerprint cards on file at the FBI. The applicant whose fingerprint card is returned as unclassifiable may have several potential "hits" as the result of the name-check process, but no criminal history report will be generated and sent to INS unless the FBI can confirm that the fingerprints on the submitted card match the fingerprints on the card on file.

[13] INS submitted this proposed policy change to the OIG for review before implementation. We noted our objections as described here. As a result, INS has not implemented the proposed policy.

We also note that in regard to bio-checks, INS continues to use a "presumptive policy." Because the number of "hits" resulting from bio-checks is comparatively small, they are more easily and accurately processed by INS, and are processed through a central location in Washington, D.C. Accordingly, the presumptive policy in regard to bio-checks does not pose as great a risk as it did in regard to fingerprint check responses. However, we note that there is and has been automated data available from the FBI to alert INS when an applicant has "cleared" the bio-check process, and such data might be used to advise the Field of the status of each applicant's bio-check. We also note that although the risk is small, the consequences of inadvertently naturalizing an applicant who has a significant "bio-check" hit could be very serious: INS could confer citizenship on someone that another federal agency regards as a threat to the United States.

Accordingly, we offer the following recommendations in regard to INS' criminal history checking procedures:

19) Except for those applicants exempt because of their age, INS should require a full fingerprint check in every case unless the applicant is unable because of physical condition to submit classifiable prints.

20) INS should provide guidance to local offices concerning the nature of the bio-check, how to obtain any "third party" responses, procedures when notified of a "possible hit," and how to evaluate any information received.

21) INS should review with appropriate officials from other agencies and with Members of Congress whether the "presumptive policy" in regard to bio-checks should be abolished in favor of a policy of definitive responses.

4. INS processing of adjustment of status applications

Our report only briefly touched on INS' administration of a benefit arguably even more valuable than citizenship—the right to live in the United States permanently. This benefit—symbolized by issuance of the "green card"—requires of INS adjudicators many of the same judgments using like information and documents as for a naturalization adjudication. All the foregoing recommendations to strengthen naturalization decision-making should also be evaluated and, if appropriate, implemented with respect to adjustments of status.

5. Reliability in representations made to Congress

We found that INS failed to follow-through on two important agreements it entered into with Congress during CUSA. First, despite having represented to Congress that it would take steps not to naturalize those persons who obtained their permanent residency through fraud—an obligation already imposed by the Immigration and Nationality Act (INA)—INS failed to provide its adjudicators with guidance on how to detect such fraud and, once detected, how to respond. By failing to ensure that adjudicators had access to applicant permanent files during CUSA, INS failed to provide adjudicators with the essential tool they would need to detect such fraud. Finally, in four of five Key Cities INS instructed adjudicators not to review the immigration history of applicants who obtained their residency under the Legalization program, thus precluding the review of those previous applications—applications for residency under the SAW program—about which Congress had been most concerned.

Second, INS failed to comply with the January 1996 reprogramming agreement it entered into with Congress that it would use the reprogrammed funds to achieve currency in both naturalization *and* adjustment of status processing during fiscal year 1996. It is unknown whether the agreement was in fact too ambitious in that both programs were badly backlogged, but it is clear that while INS Headquarters poured resources into and focused extraordinary attention on naturalization, it made almost no effort to similarly improve its adjustment of status work. As a result, it failed to make sufficient efforts to comply with this important aspect of its January 1996 reprogramming agreement.

We also found that, beginning with the September 1996 hearings into CUSA, INS repeatedly gave Congress inaccurate assurances about the extent of the processing errors made during CUSA. We did not find any deliberate intention by any INS official to mislead Congress, but we did find that the inaccuracies were often the product of insufficient care in gathering the requested information and the desire to project the agency's work in a most favorable light.

For example, in testifying about the errors in criminal history checking procedures, Associate Commissioner Crocetti assured Congress that the *confirmed* number of late-arriving, *disqualifying* criminal history reports was very small nationwide, even though INS Headquarters was then aware that the number of reports arriving late—reports that had not yet been reviewed as

disqualifying or not—was much higher and that a serious analysis of the data had barely begun. Later, when Commissioner Meissner advised the Congress that the Field had confirmed only 415 late-arriving, disqualifying criminal history reports between July and October 1996, the number was based on an inaccurate survey of the Field that grossly understated the extent of the problem. Although the desire to defend and protect the work of INS is not criticized here, in the aftermath of CUSA it prevented INS from providing Congress with accurate information about the nature and extent of the many errors that had been made.

Accordingly, we make the following recommendations:

22) When INS assures Congress that it will undertake a particular course of action, INS should assign an appropriate senior official with responsibility for ensuring follow-through on the agreement or notification to Congress of the inability to do so.

23) "Priorities" or other internal agency goals should be drafted with congressional commitments in mind so that the Field is sufficiently informed of, and thus more likely to meet, congressional expectations.

24) INS must more carefully review for accuracy the data it provides to Congress, whether that data is offered in writing or in testimony by INS officials.

25) INS should state clearly any limitations or qualifications that may apply to and affect the accuracy of the information furnished.

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